

APPEAL NO. 171072
FILED JULY31, 2017

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that an attorney's fee in the amount of \$765.00 is reasonable and necessary for services performed on November 30, 2016. Additionally, the hearing officer determined that an attorney's fee in the amount of \$1,060.00 is reasonable and necessary for services performed from December 1 through December 27, 2016.

The appellant (claimant) appealed the hearing officer's attorney fee determination contending that he did not receive any benefit from the attorney's services. The claimant also argues that the decision and order is incomplete because it lacks conclusions of law. The appeal file does not contain a response from respondent 1 (attorney) or respondent 2 (carrier).

DECISION

Affirmed in part as reformed and reversed and rendered in part.

We note the hearing officer incorrectly referenced the carrier as Charter Oak Insurance Company rather than Charter Oak Fire Insurance Company. We reform all references in the decision to reflect the correct carrier: Charter Oak Fire Insurance Company.

The Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees, Sequence No. 1 dated December 15, 2016, approved 5.10 hours of attorney's fees at \$150.00 an hour for a total attorney fee request of \$765.00. The Division Order for Attorney's Fees, Sequence No. 2 dated January 24, 2017, approved 6.70 hours of attorney's fees at \$150.00 an hour and 1.10 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee request of \$1,060.00. We note that all of the fees requested were for services performed from November 30 to December 27, 2016, prior to the effective date of the new 28 TEX. ADMIN. CODE § 152.4(d) (Rule 152.4(d)) establishing an increase in the maximum hourly rate reasonable for workers' compensation disputes in Texas of \$200.00 for attorneys and \$65.00 for legal assistants. The standard for review in an attorney's fee case is abuse of discretion. Appeals Panel Decision 061189, decided July 24, 2006.

The hearing officer made a finding of fact that a reasonable hourly rate for attorneys is \$150.00 and for legal assistants is \$50.00 and that on November 30, 2016,

the attorney devoted 5.10 hours to the prosecution of this case and such services were reasonable and necessary. Those findings are supported by sufficient evidence and are affirmed.

The hearing officer in Finding of Fact No. 7 found that from December 1 through December 27, 2016, the attorney devoted 6.10 hours and the legal assistant devoted 1.10 hours to the prosecution of this case and such services were reasonable and necessary. However, in Finding of Fact No. 4 the hearing officer found by order dated January 24, 2017, in Sequence No. 2, attorney fees were approved in the amount of \$1,060.00, which included 6.70 hours of attorney time and 1.10 hours of legal assistant time. The evidence reflects that the request for attorney's fees was approved in the amount of \$1,060.00 which included 6.70 hours of attorney time. Accordingly, we reform Finding of Fact No. 7 to reflect 6.70 hours of attorney time rather than 6.10 hours of attorney time to conform to the evidence. The hearing officer's Finding of Fact No. 7 as reformed is supported by sufficient evidence and is affirmed.

The claimant correctly noted in his appeal that the hearing officer failed to make a conclusion of law regarding attorney's fees. Section 410.168 provides that a hearing officer's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. Rule 142.16 provides, in part, that a hearing officer's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due. That portion of the hearing officer's attorney fee determination is incomplete. Accordingly, we reverse that portion of the hearing officer's decision as being incomplete, and we render a new decision to conform to the evidence and the hearing officer's finding of fact that the attorney's fee award in Sequence No. 1 in the amount of \$765.00 is reasonable and necessary for services performed on November 30, 2016, and that the attorney's fee award in Sequence No. 2 in the amount of \$1,060.00 is reasonable and necessary for services performed from December 1 through December 27, 2016.

The true corporate name of the insurance carrier is **CHARTER OAK FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge